

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

BENJAMIN J. GONZALEZ,

Plaintiff,

vs.

No. CIV 16-0909 JB/LAM

STATE OF NEW MEXICO; GREY  
SHULLER; PATRICK MELVIN;  
ALEXANDER CHING; MARY CRAIG; ELI  
MONTES; RICHARD VAN DYK; ALLEN  
SANCHEZ and ERNIE MENDOZA

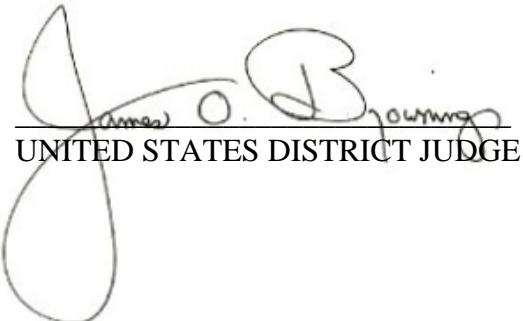
Defendants.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL WITHOUT PREJUDICE**

**THIS MATTER** comes before the Court: (i) on the Court's Order to Cure Deficiency, filed August 23, 2016 (Doc. 3) ("Deficiency Order"); and (ii) on the Court's Order to Show Cause, filed October 11, 2016 (Doc. 4) ("Show Cause Order"). In the Show Cause Order, the Court ordered Plaintiff Benjamin J. Gonzalez to comply with the Court's Deficiency Order. In the Show Cause Order, the Court warned Gonzalez that if he "fails to cure the designated deficiencies within thirty (30) days from the date of this order, this action may be dismissed without prejudice." Show Cause Order at 2. As of this date, Gonzalez has not complied with the Court's August 23 2016 Deficiency Order, shown cause why the Court should not dismiss this action, or otherwise responded to the Court's order. Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action *sua sponte* "[i]f the plaintiff fails to prosecute or comply with these rules or a court order." Fed. R. Civ. P. 41(b). See Olsen v. Mapes, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)(noting that Fed. R. Civ. P. 41(b) "has long been interpreted to permit courts to dismiss actions *sua sponte* for a plaintiff's failure to

prosecute or comply with the rules of civil procedure or court's orders"). Because Gonzalez has failed to comply with the Court's August 23, 2016 Deficiency Order and October 11, 2016 Show Cause Order, the Court will dismiss his 1983 Prisoner Civil Rights Complaint, filed August 5, 2016 (Doc. 1), without prejudice pursuant to rule 41(b).

**IT IS ORDERED** that the Plaintiff's 1983 Prisoner Civil Rights Complaint, filed August 5, 2016 (Doc. 1) is dismissed without prejudice and judgment will be entered.



James O. Bowering  
UNITED STATES DISTRICT JUDGE

*Parties:*

Benjamin J. Gonzalez  
3201 Highway 314 SW  
Los Lunas, New Mexico

*Plaintiff pro se*

State of New Mexico, Eddy County's Judicial Body  
Carlsbad, New Mexico

-- and --

Grey Shuller  
Judge  
Richard Van Dyk  
Magistrate Judge  
Patrick Melvin  
District Attorney  
Eli Montes  
Court Clerk  
New Mexico Fifth Judicial District  
Carlsbad, New Mexico

-- and --

Alexander Ching  
Public Defender  
New Mexico Public Defender's Office  
Hobbs, New Mexico

-- and --

Mary Craig  
Public Defender  
New Mexico Public Defender's Office  
Carlsbad, New Mexico

-- and --

Allen Sanchez  
Detective  
Ernie Mendoza  
Sheriff  
Carlsbad Police Department  
Carlsbad, New Mexico

*Defendants pro se*